EXHIBIT D

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 1                 UNITED STATES DISTRICT COURT

 2               NORTHERN DISTRICT OF CALIFORNIA

 3                  SAN FRANCISCO DIVISION

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 5   ORACLE AMERICA, INC.,          )

 6           Plaintiff,             )

 7      vs.                         )   No. CV 10-03561 WHA

 8   GOOGLE, INC.,                  )

 9           Defendant.             )

10   _____)

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14       -- HIGHLY CONFIDENTIAL, ATTORNEYS' EYES ONLY--

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17       Videotaped deposition of OWEN ASTRACHAN, PH.D.,

18       taken at King & Spalding, LLP,

19       333 Twin Dolphin Drive, Redwood Shores, California,

20       commencing at 9:29 a.m., on

21       Friday, September 9, 2011,

22       before Leslie Rockwood, RPR, CSR No. 3462.

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1 you think there's any creative expression in coming up
2 with this group of 8,000 -- in the names that make up the
3 8,000 as a whole, as opposed to looking at them at an
4 individual level where they may not be protectable?
5   MR. BABER: Object to the form.   18:32:52
6   THE WITNESS: You used a word creative
7 expression again in talking about design and making
8 choices as to what goes in. And I don't -- my
9 understanding is expression does not apply to the design
10 or choices that are made.   18:33:04
11   Q. BY MR. KUWAYTI: I'm asking about the names.
12 This group of 8,000 names. Do you think there's any
13 creative expression in this group of 8,000 names of
14 methods and parameters, et cetera, that make up the 37
15 APIs?   18:33:23
16   MR. BABER: Object to the form.
17   THE WITNESS: I go back to what I've stated
18 before. I think that the entire API, which consists --
19 well, let's talk -- the method names? Each individual
20 name is not protected. That's my understanding. You   18:33:38
21 asked -- you're asking whether the group of all the
22 names -- so I look on a piece of paper, for example, and
23 I see 8,000 method names. Is there creative expression
24 in that whole --
25   Q. BY MR. KUWAYTI: Yes.   18:34:04

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1   A. -- of the 8,000 names?
2   Q. Yes.
3   A. And my answer is I don't think so, because I
4 think each name by itself is largely driven by functional
5 considerations, and writing them all down, say, in   18:34:14
6 alphabetical order, doesn't lend more expression to it
7 than existed before.
8   Q. Okay. So these aren't in alphabetical order.
9 They're in particular hierarchical order, and they're
10 originated into different collections.   18:34:29
11   Do you think that -- take these 37 APIs which
12 organize all these different names into their own -- into
13 the way that they do, into different packages and
14 classes, and do you think there's any creative expression
15 in that?   18:34:46
16   MR. BABER: Object to the form.
17   THE WITNESS: I believe I've answered that
18 before in my reports in saying that the packages
19 themselves, what goes in IO and what goes in XML, are
20 largely driven by functional and design considerations so   18:34:57
21 that what's in those -- the choices of what goes in,
22 making the choice itself, that involves creativity in the
23 design process, but writing down the hierarchy of classes
24 is not creative expression.
25   MR. BABER: I believe you've got about five   18:35:20

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1 minutes left. Just a heads up.
2   MR. KUWAYTI: That's about right.
3   Q. Do you believe that there is creativity in
4 the choice of the names -- of any of these names?
5   A. I'm asking -- I'm -- if you're asking in   18:35:30
6 deciding what to name a method, does the designer
7 exercise any creativity?
8   Q. Yes.
9   A. And my answer would be even though those
10 names are largely driven by functional concerns, there   18:35:47
11 are certainly choices you can make about whether the name
12 should be length or size or total length.
13   And when you make those choices, it's
14 reasonable to think that you're -- you know, the choice
15 itself has some creativity, but the name itself is   18:36:09
16 functional, but you're making a choice between .size and
17 .length. Is that creative? That's -- it's not clear to
18 me that that's creative. That's a choice, and it doesn't
19 really matter which one you choose. So I'm not sure I
20 would call that a creative choice.   18:36:31
21   Q. When you add up the 8,000 choices that went
22 into choosing all these different names and organizing
23 them, would you agree that there's at least minimal
24 creativity involved in that process?
25   MR. BABER: Object to the form.   18:36:46

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1   THE WITNESS: I would not agree that if you
2 add up 8,000 epsilons that you get anything other than
3 epsilons. And I'm using, kind of, a mathematical
4 definition of if there's no -- if there's little to no
5 creativity in each individual one, but somehow that   18:36:58
6 little -- when you add up all the littles, do you get
7 something, and I don't think that you can make that
8 conclusion.
9   Q. BY MR. KUWAYTI: In your opening report at
10 paragraph 62 -- beginning at paragraph 62, you gave some   18:37:09
11 examples of where you believe that Oracle and Sun have
12 implemented various APIs.
13   A. Yes, I did.
14   Q. And my question is: Did you do anything to
15 research whether there was a license to use these APIs by   18:37:30
16 Oracle or Sun?
17   A. No. I didn't look to see if there was a
18 license.
19   Q. Did you do any research to see whether there
20 was permission given to Oracle or Sun to use these APIs?   18:37:48
21   A. I didn't do research, but I'm reasonably
22 confident that no agreement was made with Visicalc, for
23 example, to include those method names, because I don't
24 think -- from Oracle or Sun, between StarOffice and
25 OpenOffice. I don't -- I'm assuming they did not talk to   18:38:13

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1 the originators of Visicalc. That's an assumption. I
2 could be wrong.
3   Q. And you're assuming that why, because --
4   A. Because I'm thinking that the originators of
5 Visicalc probably aren't around as part of Visicalc.   18:38:25
6 They're certainly around as part of being guys that are
7 still alive.
8   Q. Right. The company's not around anymore?
9   A. Correct.
10   Q. Do you know if in any of these cases was   18:38:36
11 anybody claiming that these APIs at issue were
12 proprietary?
13   A. I don't know whether there was any -- there
14 were any such claims, no.
15   Q. Did you read -- did you do research to   18:38:47
16 determine how much of the API was used, whether it was
17 just the names or whether it was the organizational
18 structure?
19   A. No. My report talks about the names, and so
20 I was concentrating on the fact that the names were the   18:39:02
21 same in these two, and I didn't look to see how those
22 names might be organized within the different
23 spreadsheets, because we're talking about the spreadsheet
24 example.
25   Q. Okay. So my last question is: Do you have   18:39:15

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1 any opinions -- any additional opinions that aren't
2 reflected in your report and that you haven't already
3 discussed here at the deposition today with respect to
4 Dr. Mitchell's reply report? Do you have any additional
5 opinions to offer?   18:39:34
6   A. Are you asking about his last report?
7   Q. His last report or -- do you have any new
8 opinions that aren't reflected in your reports, I guess
9 is my question?
10   A. No. I -- no. I don't think I have new   18:39:43
11 opinions that aren't reflected in my reports, other --
12 new ones. I mentioned earlier about the names that I
13 hadn't had, but I don't have any other opinions.
14   MR. KUWAYTI: Okay. I have no further
15 questions.   18:39:57
16   MR. BABER: All right. I have no questions.
17   THE VIDEOGRAPHER: This marks the end of
18 Volume 1, Disk 4, and concludes the deposition of
19 Professor Owen Astrachan. The time is 6:40 p.m., and we
20 are off the record.   18:40:09
21   MR. BABER: And on the non-video record, we
22 do reserve our rights to read and sign. We exercise our
23 rights to read and sign.
24   (TIME NOTED: 6:40 p.m.)
25   ---oOo---

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1   I declare under the penalty of perjury
2 under the laws of the State of California that the
3 foregoing is true and correct.
4   Executed on _____, 2011,
5 at _____, _____.
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11   _____
12   SIGNATURE OF THE WITNESS
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1 STATE OF CALIFORNIA   ) ss:
2 COUNTY OF MARIN   )
3
4   I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:
6   That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;
9   That testimony of the witness and all
10 objections made by counsel at the time of the examination
11 were recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.
16   I further certify that I am neither counsel
17 for any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested in
19 the outcome thereof.
20   IN WITNESS WHEREOF, I have subscribed my name
21 this 10th day of September, 2011.
22
23
24   _____
25   LESLIE ROCKWOOD, RPR, CSR NO. 3462

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